



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 28, 2005

Mr. John T. Patterson  
Assistant City Attorney  
City of Waco  
P.O. Box 2570  
Waco, Texas 76702-2570

OR2005-00841

Dear Mr. Patterson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 217815.

The Waco Police Department (the "department") received a request for information concerning a specified motor vehicle accident. You claim that some of the requested information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses the doctrine of common-law privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976).

The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. In addition, this office has found that the following types of information are excepted from required public disclosure under common-law privacy: an individual's criminal history when compiled by a governmental body, *see* Open Records Decision No. 565 (citing *U. S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989)); personal financial information not relating to a financial transaction between an individual and a

governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990); some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps); and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). The submitted documents contain a small amount of information that is protected by common-law privacy. The department must withhold this information, which we have marked, pursuant to section 552.101 of the Government Code.

Next, section 552.101 also encompasses information made confidential by other statutes. You have highlighted information in the submitted documents that you contend is excepted under section 552.101 in conjunction with section 772.318 of the Health and Safety Code.<sup>1</sup> Chapter 772 of the Health and Safety Code relates to local emergency communications districts. Section 772.318 applies to an emergency communications district established in accordance with chapter 772, and provides in part:

(a) As part of a computerized 9-1-1 service, a service supplier shall furnish current telephone numbers of subscribers and the addresses associated with the numbers on a call-by-call basis.

...

(c) Information furnished under this section is confidential and is not available for public inspection.

Health & Safety Code § 773.318(a), (c). You indicate that the City of Waco is part of an emergency communication district that was established under section 772.318. Based on your representations and our review, we determine that the address and telephone number you have highlighted in the documents are excepted from public disclosure under section 552.101 in conjunction with section 772.318 of the Health and Safety Code. *See* Open Records Decision No. 649 (1996).

Finally, you have also highlighted Texas motor vehicle registration information in the submitted documents. Section 552.130 of the Government Code provides in pertinent part:

(a) Information is excepted from the requirements of Section 552.021 if the information relates to:

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<sup>1</sup> While you cite to section 772.218 of the Health and Safety Code in your comments to this office, we understand you to assert that 772.318 is applicable to the information. Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000. *See* Health & Safety Code § 772.304. Section 772.218 applies to an emergency communication district for a county with a population of more than 860,000. *See id.* § 772.204.

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130. We note that the requestor is the authorized representative of the driver of one of the vehicles at issue, and therefore has a special right of access to a portion of the information pursuant to section 552.023. *See* Gov't Code § 552.023 (person's authorized representative has special right of access to information that is excepted from public disclosure under laws intended to protect person's privacy interest as subject of the information). We have marked the motor vehicle information that the department must withhold pursuant to section 552.130 of the Government Code, as well as the portion of this information that must be released.

In summary, we have marked a small amount of information that must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. The originating address and telephone number of a 9-1-1 call you have highlighted in the submitted documents must be withheld under section 552.101 in conjunction with section 772.318 of the Health and Safety Code. We have marked the portion of the motor vehicle information at issue that must be withheld under section 552.130 of the Government Code. The remainder of the submitted information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within thirty calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within ten calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within ten calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records

will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within ten calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within ten calendar days of the date of this ruling.

Sincerely,



David R. Saldivar  
Assistant Attorney General  
Open Records Division

DRS/seg

Ref: ID# 217815

Enc: Submitted documents

c: Mr. Michael A. Zimmerman  
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P.O. Box 88  
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(w/o enclosures)